



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SDMS Document



96379

January 16, 2007

BY TELECOPY & REGULAR MAIL

Maura E. Blau, Esq.
Farer Fersko
600 South Avenue
Westfield, NJ 07091

Re: Diamond Alkali Superfund Site/Belleville Industrial Center
Notice of Potential Liability for Response Actions in Lower Passaic River Study Area

Dear Maura:

This will respond to your inquiry about the ABEL model results generated by the United States Environmental Protection Agency ("EPA") using tax returns provided by your client, Belleville Industrial Center ("BIC"). You asked how the model results could be used to determine the extent of BIC's ability to participate financially in the remedial investigation and feasibility study for the Lower Passaic River Study Area.

The simple answer is that the model results do not yield a definitive "ability to pay" figure. Instead, the ABEL model is a screening tool that can be used to evaluate whether or not, as a threshold matter, a company may be a suitable candidate for a reduction in amount due based on ability to pay. The model yields a figure, identified as available after-tax cash flow, that is deemed to be the amount available for payment of the amount in question. If the party's after-tax cash flow exceeds the amount due, the party generally would be deemed not to be eligible for consideration for any reduction based on ability to pay. In other words, the model screens out parties that are not eligible. It does not determine ability to pay.

In contrast, if the modeling shows an after-tax cash flow insufficient to pay the amount due, the inquiry would not end there. If EPA is negotiating an ability-to-pay settlement, prior to considering a specific compromise of costs, EPA would look beyond the data derived from the income tax returns and input to the model. For example, EPA would evaluate the company's compensation of officers, nature of expenses reported, contributions to charitable organization, and cash dividends. EPA might consider whether the party's assets are essential to its business, whether the company has additional debt capacity, and whether affiliated companies could

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provide an additional source of funds. Generally, only after this detailed evaluation does EPA agree to a reduction in the amount that the party is responsible to pay. To understand how EPA would approach an ability-to-pay analysis, you may wish to review EPA's guidance document entitled "General Policy on Superfund Ability to Pay Determinations," which can be found on EPA's website at:

<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/genpol-atp-rpt.pdf>.
This document sets forth EPA's policy on settling with responsible parties of limited means.

We understand that BIC is in discussions with the Lower Passaic River Cooperating Parties Group ("CPG") about BIC's participation in the CPG on a basis commensurate with its ability to pay. Because of the complexity of the LPRSA, the number of potentially responsible parties, and the fact that the remedial investigation and feasibility study for the LPRSA is far from complete, EPA is not prepared at the current time to consider entering into negotiations with respect to a settlement based on limited ability to pay. We encourage BIC to make such use as it deems appropriate of the ABEL results in its discussion with the CPG.

Please do not hesitate to contact me at 212-637-3136 if you wish to discuss this matter further.

Very truly yours,



Sarah P. Flanagan

cc: Emily L. Won, Esq.
Mr. William J. Hengemihle

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Region II
290 Broadway - 17th Floor
New York, New York 10007-1866

FACSIMILE REQUEST AND COVER SHEET

To: Maura Blau, Esq.

Fax: 908-789-8660

From: Sarah Flanagan

Office: Office of Regional Counsel
New Jersey Superfund Branch

Phone: 212-637-3136

Fax: 212-637-3096 Confirmation: 212-637-3251

Date: January 16, 2007

Number of Pages (including cover page): 3

Message: Please see attached.

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FACSIMILE REQUEST AND COVER SHEET

To: Emily Won, Esq.

Fax: 973-848-4001

To: Bill Hengemihle

Fax: 610-254-1188

From: Sarah Flanagan

Phone: 212-637-3136

Fax: 212-637-3096 Confirmation: 212-637-3251

Date: January 16, 2007

Number of Pages (including cover page): 3

Message: